Good Morning!

I'm Steve Parrish, Senior Vice President and General Counsel of Philip Morris, USA.

At the outset, I would like to emphasize we are committed to working in a constructive and cooperative manner with the State of Maryland in this proceeding. We believe that if you are presented with relevant data, if you have the opportunity to view the data completely and fairly, and if you take the opportunity to observe the various working environments to which your regulatory decisions will apply, you will be in the best possible position to make a decision which protects worker health and safety without placing unwarranted

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burdens upon Maryland business and without unnecessarily intruding on the rights of individual workers.

Others will address in greater detail the legal and scientific issues raised by this proposed standard. I would like to comment on our Company's positions on issues that you are facing, including indoor smoking and the relationship of the EPA's risk assessment on ETS to indoor smoking.

Philip Morris Companies Inc. is the largest consumer packaged goods company in the world, with major tobacco, food and beer operations including Kraft, Miller Brewing, General Foods and Suchard. The Company's operating subsidiaries produce brand name products such as *Maxwell House, Sanka, Jell-O, Kool-Aid, Marlboro, Kraft cheeses, Oscar Mayer, Cool*

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Whip, and Miller Beer. The Company's interests in this matter are (1) as an employer, (2) as the owner and/or manager of buildings, and (3) as a manufacturer of cigarettes in the United States.

We recognize the complexity of the issues relating to a comprehensive consideration of indoor air quality. We also recognize the concerns of some individuals and organizations regarding the issue of environmental tobacco smoke. We acknowledge that some people may find smoking objectionable in the workplace, public buildings or government buildings. However, the rights of all individuals should be recognized and addressed, and local accommodation of both smokers and nonsmokers through reasonable measures tailored to the specific circumstances, can and should be encouraged.

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We believe that employers and building owners should address indoor smoking simply as one part or component of an overall building systems approach to total indoor environmental quality.

Many here today may argue against any approach to indoor smoking that does not result in a complete ban -- arguing that the EPA's risk assessment on ETS establishes that nonsmoker exposure to ETS causes cancer and other diseases. However, in our view, the EPA's risk assessment -- which does not focus on workplace data -- is among the most flawed ever issued by the Agency.

On January 7, 1993, the U.S. Environmental Protection Agency issued its final Risk Assessment on

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Environmental Tobacco Smoke, declaring it a Group A carcinogen. Since that time, there has been a flood of valid criticism of EPA's action, and those criticisms are reflected in subsequent litigation against the EPA.

The Council for Burley Tobacco, the Flue-Cured Tobacco Cooperative Stabilization Corporation, Gallins Vending Company, Universal Leaf, R.J. Reynolds and Philip Morris filed suit in U.S. District Court for the Middle District of North Carolina to have that EPA report declared null and void.

In essence, the lawsuit against the EPA levels three basic charges: First, EPA's preparation and publication of the ETS Risk Assessment violated the terms and limitations of

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EPA's limited authority under the Radon Act. In other words, EPA exceeded its statutory authority.

Second, EPA failed to follow its own publicly announced guidelines for conducting cancer risk assessments. Very simply, when the guidelines would not allow the EPA's predetermined conclusions, they were ignored.

Third, we believe that throughout the EPA risk assessment, the agency made numerous mistakes, and those mistakes were compounded by a series of data manipulations that violate established principles of science, as well as what should be principles of government.

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Further highlighting EPA's shortcomings, the National Cancer Institute this month published research indicating that poor diet alone is a risk factor for lung cancer in nonsmokers. Not one single study of ETS adequately adjusted for possible dietary effects. Neither did the EPA. The risks reported in the NCI diet study are sufficient to account for the risks attributed to ETS in the EPA's review of spousal smoking studies.

In science, confounding factors are not just minor matters. They are risk factors for the disease that must be addressed before any causal inference can be made. Not a single study reviewed by the EPA adequately accounted for the most important potential confounders -- particularly diet, genetic predisposition and occupational exposures.

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The EPA claims that ETS exposure is responsible for 3,000 lung cancer deaths annually among nonsmokers in the U.S. That figure was projected at by combining the risk estimates from 11 U.S. studies based on spousal smoking in the home and lung cancer in nonsmoking females. But the EPA encountered numerous problems with the data.

First, not one of the 11 individual studies reported an overall statistically significant risk for spousal smoking. So EPA tried to aggregate the results from all the studies and actually lowered the standard for statistical evaluation -- accepted by the scientific community and by EPA itself -- in order to force its conclusions.

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We and others pointed out to the EPA that it had failed to include the data from two U.S. studies published two months prior to the Risk Assessment's finalization.

To me personally, this is the single most egregious abuse of the scientific data by the EPA. They ran out of time, they said. There has to be a cut-off point, they said. However, while there was no time to incorporate the data from two major U.S. studies, there was time the EPA to include a study that isn't even finished, and when finished, will be unlikely to represent the conclusions that EPA drew from preliminary data.

But EPA and many others in the scientific community know exactly what those two U.S. studies would do if

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incorporated: negate the EPA findings. They will do that even with the lowered statistical standard.

There's more. EPA took its estimate of 1.19 based on spousal smoking in the home and extended it to all nonsmokers in all venues, including the workplace. Another problem: Fourteen of the studies considered by the EPA looked at nonsmoker exposure to ETS in the workplace. When the results from those studies are aggregated in EPA fashion, the risk estimate indicated, there's no increase in risk. EPA's reply? The database for the workplace is smaller that than for spousal smoking and workplace exposures are variable. (How the EPA would know the latter is curious because it did not consider the data from the major available studies on actual ETS exposures

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in the workplace.) EPA does not mention that the workplace data , if examined, contradict and negate its basic claims.

[So what does EPA's estimate of 3000 deaths really mean? The estimate, with all its splendor and pseudo-scientific wrappings, is spurious and not based on the actual data on ETS. The actual data are at least consistent with no discernible increased risk among nonsmokers.]

Thus, EPA manipulated and "cherry-picked" scientific data, ignored recent studies that contradicted its conclusions, and used scientific assumptions and methodologies not generally accepted by the scientific community or even by the agency itself in other risk assessments it had conducted in the past.

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When existing data failed to provide the agency with a sound scientific basis to declare ETS a known human carcinogen, it continued to select and manipulate the data until a statistical relationship between ETS exposure and lung cancer could be claimed. To force the result it wanted, EPA, in the midst of the risk assessment process, changed the statistical confidence interval from 95 percent to 90 percent in its analyses of U.S. studies.

In forcing its conclusion, the EPA had to ignore its own scientific guidelines. The EPA:

* did not follow accepted statistical principles;

* engaged in unjustified biological assumptions;

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* failed to give full consideration to "all relevant scientific information" and, indeed, omitted from consideration two of the most recent U.S. studies on lung cancer in nonsmokers;

* failed to thoroughly address alternative confounding factors, such as diet, occupational exposures and genetic dispositions;

* failed to "fully present" critical scientific data -- it didn't consider data on actual ETS exposures in public places, workplaces and the other venues. It didn't consider chemical-physical data on the differences between mainstream smoke and ETS; it ignored all the animal inhalation studies on tobacco smoke -- all of which fail to support EPA's contention;

* failed to "use the most scientifically appropriate interpretation to assess risk," in fact, it rejected one means of estimating risk because the method

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didn't generate any appreciable increased risk; and

* failed to acknowledge and describe uncertainties, assumptions and limitations in both the data and its interpretation.

I wish I could tell you that what the EPA has done about environmental tobacco smoke is unprecedented, that is just an aberration aimed at an unpopular target. But it's not. The EPA's history regarding dioxin, Alar, and asbestos indicates otherwise.

In the past, many have been skeptical of what we have had to say about environmental tobacco smoke. My only hope is that you will apply perhaps ten percent of the skepticism that

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you might reserve for me for the proponents of this standard. If you can go just that far, if your skepticism can take you into the issues then I'm confident that you will conclude that what the EPA and others want you to see is not what the science supports. What the EPA wants you to see is a risk assessment that no one but the tobacco interests will challenge, because it's about tobacco. And, it seems that virtually everyone is willing to believe virtually anything negative about tobacco without scrutiny.

Tobacco may be unpopular, and the science of ETS is quite complex. But in the courts and in regulatory proceedings, evidence must exceed the parameters of popular opinion. That's why we have sought judicial review of the EPA's risk assessment on ETS and that is why we urge you not to make

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regulatory decisions about smoking based upon the EPA's report.

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